IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 33693 of 2007(J)

PETITIONER:

CHACKO P.J., PARAMPATH HOUSE,
THRIKODITHANAM PO, CHANGANACHERRY,
KOTTAYAM.

BY ADV. SRI.JOSE J.MATHAIKAL

RESPONDENTS:

1. THE UNION OF INDIA REPRESENTED BY
SECRETARY TO GOVERNMENT, MINISTRY OF COMMUNICATION
DEPARTMENT OF TELECOMMUNICATION GOVERNMENT OF
INDIA, NEW DELHI.

2. THE THRIKODITHANAM GRAMA PANCHAYATH
THRIKODITHANAM PO, KOTTAYAM DISTRICT
REPRESENTED BY ITS SECRETARY.

3. RELIANCE TELECOM INFRASTRUCTURE PRIVATE
LIMITED, BEHIND ERNAKULAM MEDICAL CENTRE
PALARIVATTOM, KOCHI.

4. P.J.KURIAKOSE, PARAMPATH,
THRIKODITHANAM, CHANGANACHERRY.

R1 BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR
R3 BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
R4 BY ADV. SRI.JAWAHAR JOSE
SMT.CISSY MATHEWS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 33693 OF 2007

Dated this the 5th day of December, 2007

JUDGMENT

Heard Sri.Jose J.Matheikel, counsel for the petitioner and Sri.V.G.Arun, counsel for the 3rd respondent company. My attention was drawn by Sri.Matheikel to Rule 142(2) as well as !33(3) of the Kerala Municipality Building Rules. He also drew my attention to Rule 47 A of the Indian Electricity Rule, 1956. He submitted that the Secretary of the Panchayat should be directed to issue use certificate under Rule 133(3), only after being convinced that construction of the tower has been strictly in accordance with the approved plan issued by the Panchayat for construction and in accordance with Ext.P4 application. He further submitted that since it is clear that the 3rd respondent company proposes to install a generator, it has to be ensured that generator is kept inside a sound proof cabin. He would further submit that it should be ensured that Rule 147 A of the Indian Electricity Rules is complied with. Mr.Arun would submit that the construction of the tower will be strictly in accordance with the approved plan and Ext.P4. He has no objection in being directed to construct the tower in accordance with the plan and Ext.P4. As regards the argument based on Rule 133 (3), he submitted that the generator to be installed will be covered with a sound

proof cabin(acrostic chamber) as required will be up to the standards prescribed by Rule 133(a) and it is always open to the Secretary of the Panchayat to ensure that it is so. As regards the submission based on Rule 47 A of the Indian Electricity Rules, the learned counsel submitted that in all probability there are some exemptions granted to companies like the 3rd respondent regarding the application of Rule 47 A.

Considering the rival submissions, I am of the view that the Writ Petition itself can be disposed of issuing the following directions:

The Secretary of the Panchayat is directed to inspect the tower and the acrostic cabin, once they are completed by the petitioner. The Secretary will hear the parties on the question of issuance of use certificate to the petitioner under Rule 141(2) and then only will pass orders directing issuance of use certificate. It is open to the 3rd respondent to convince the Secretary during such hearing that they have complied or that the mandates of Rule 47 A of the Indian Electricity Rules are not applicable in their case.

PIUS C. KURIAKOSE, JUDGE

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